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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

AMBER MICHELLE VAN HORN,

Defendant and Appellant.

G032116

(Super. Ct. No. 01SF0869)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Daniel J. Didier, Judge. Affirmed.

David K. Rankin, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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Amber Michelle Van Horn pleaded guilty to 12 counts of robbery, 2 counts of attempted robbery, and admitted allegations she personally used a firearm during one of the robberies and was vicariously armed in the remaining offenses. In exchange for her guilty plea, defendant received a 13-year prison sentence on one of the robbery counts: the middle term of 3 years and a 10-year personal use enhancement.

We appointed counsel to represent defendant on appeal. Counsel filed a brief setting forth the facts of the case. Counsel did not argue against his client, but advised the court no issues were found to argue on Van Horn's behalf. We have examined the record and found no arguable issue. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant, given 30 days to file written argument in her own behalf, submitted a supplemental brief raising several issues.

Defendant complains her lawyer at the preliminary hearing was incompetent. Turning to the gun enhancement, defendant makes the following points: (1) the preliminary hearing magistrate did not hold her to answer on the personal use allegation; (2) the trial court commented the evidence supporting the use enhancement was weak; (3) her codefendant pleaded guilty and admitted he was the culprit who actually used the handgun; and (4) her lawyer declined to join in her plea because he believed she did not personally use the gun. Finally, defendant contends her guilty plea was entered under duress.

Defendant failed to obtain a certificate of probable cause, a necessary prerequisite to our consideration of an appeal after a guilty plea. (Pen. Code, § 1237.5; *People v. Buttram* (2003) 30 Cal.4th 773, 780-781.) Procedural barriers aside, defendant's claims do not require reversal of the judgment. Because the magistrate failed to make a factual finding, the prosecution was not barred from filing the use enhancement (*People v. Superior Court (Jurado)* (1992) 4 Cal.App.4th 1217, 1225), and the trial court's observation the evidence appeared weak has no legal significance. Her

codefendant's plea is not part of the appellate record and the trial court specifically found defendant "freely, voluntarily [and] intelligently waived her rights."

The judgment is affirmed.

ARONSON, J.

WE CONCUR:

SILLS, P. J.

IKOLA, J.